IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,

v

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, Defendant.

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No C-08-03124 VRW

ORDER

On March 20, 2009, the court granted California Insurance Guarantee Association's ("CIGA") motion to dismiss under FRCP 12(b)(1) on the ground of claim preclusion. Doc #29. The court entered judgment on March 23, 2009. Doc #30. The United States now moves to alter or amend the judgment under FRCP 59(e) "to correct a manifest error of law." Doc #31. Because the court finds no clear error of law in its prior ruling, the United States' motion is denied.

I

The complaint dismissed by the March 20, 2009 order alleged that a United States armed services veteran (“Veteran Doe”) became injured by a dog attack during his employment in March 1991. Doc #1 at 1. Veteran Doe received medical care from the United States Department of Veterans Affairs Medical Center in Loma Linda, California. Id. Veteran Doe submitted a workers compensation claim to his carrier, Superior National Insurance Company. Id. Superior National became insolvent in 1992. Id. Thereafter, according to the complaint, CIGA assumed Superior National’s insurance policy obligations. Id at 2–3.

The California legislature created CIGA under the Guarantee Act to provide a means for paying benefits to insureds when insurers become insolvent. See Cal Ins Code § 1063 et seq. California requires each insurer admitted to transact property and casualty insurance within the state to join CIGA. Id.

On October 12, 2004, the United States filed a lien with the Workers’ Compensation Appeals Board (“WCAB”) for the expenses incurred in treating Veteran Doe on the theory that CIGA must reimburse the United States for the treatment that was covered by Veteran Doe’s policy with now-insolvent Superior National. Doc #17-2, Exh A. In the proceedings before the WCAB, CIGA contended that California law excluded the United States’ lien. Doc #11, Exh 3 at 30. On September 8, 2006, administrative law judge Rodney M Johnson rejected the United States’ lien, on the ground that CIGA has no obligations under state law to the federal government and, while the United States would have been able to recover a lien from an insurance carrier, CIGA is not an insurance carrier. Id.

After the filing of multiple briefs and two motions for reconsideration, the WCAB issued its final order on April 23, 2007 denying reconsideration and constituting a final order denying the United States' lien claim. Doc #11-3, Exh 15 at 40. While the United States argued that 38 USC § 1729 entitled the federal government to repayment for medical expenses from CIGA, the WCAB held that section 1729 does not apply to CIGA because "CIGA is not an 'insurance carrier' or 'state agency' that is a 'third party' as defined by and covered by section 1729 of title 38 of the United States Code * * * ." Id at 41.

The United States did not exercise its right of appeal in state court by way of applying for a writ of review within 45 days of the WCAB order (Cal Labor Code § 5950). After the time for review in state court passed, the United States filed its complaint herein on June 27, 2008. Doc #1.

On March 20, 2009, the court granted defendant's motion to dismiss this action on the basis of claim preclusion. Doc #29. The court reasoned that the Full Faith and Credit Act, 28 USC § 1738, mandates that federal courts treat state court judgments with the same respect they would receive in the rendering state. Id at 4. The court noted that Skysign Int'l v Honolulu, 276 F3d 1109, 1115 (9th Cir 1994) extended the claim preclusion principle to state administrative adjudications and that United States v Utah Construction & Mining Co, 384 US 394, 422 (1966) set forth three requirements that administrative determinations must meet in order to have preclusive effect. Doc #29 at 4. The Utah Construction test, also adopted by California law, requires that: (1) the administrative agency act in a judicial capacity, (2) the agency resolve disputed issues of fact properly before it and (3) the parties have an adequate opportunity to litigate. Doc #29 at 4, citing 384 US at 422. The court then found that the proceedings before the WCAB, a "Constitutional court" under California law, met each of the Utah Construction requirements. Id at 5-6.

II

A motion to alter or amend judgment pursuant to FRCP 59(e) is appropriate if a party presents newly discovered evidence, the court committed clear error, the initial decision was manifestly unjust or there is an intervening change in controlling law. School Dist No 1J, Multnomah County, Or v ACandS, Inc, 5 F3d 1255, 1263 (9th Cir 1993).

The United States argues that the court should alter or amend its March 20 order because the court made a clear error of law. More specifically, the United States argues that the WCAB was compelled to follow state law under Greener v WCAB, 6 Cal 4th 1028 (1993) and therefore did not have jurisdiction to rule that the California laws on which the WCAB based its decision were preempted by federal law. Doc #31 at 9-11. Because the WCAB did not have jurisdiction over the preemption issue, according to the United States, "the WCAB's final order [did] not have preclusive effect" based on Shaw v Calif Dept of Alcoholic Beverage Control, 788 F2 600 (9th Cir 1986). Doc #31 at 11.

In Shaw, the plaintiffs sought damages and injunctive relief against the California Department of Alcoholic Beverage Control ("ABC"), the director of ABC, the City of San Jose, the police department and the chief of police. 788 F2d at 603. The complaint alleged that a prior proceeding before the ABC improperly revoked the plaintiffs' liquor license in violation of their constitutional rights and that the other defendants engaged in a discriminatory campaign against plaintiffs in violation of the Equal Protection Clause. Shaw, 788 F2d at 603. The city, the police department and the chief of police argued that the prior proceeding before the ABC barred claims against them for constitutional violations that occurred prior to the ABC hearing based on issue preclusion. Id at 606-07. The Ninth Circuit found that issue preclusion did not bar the constitutional claims against the city, the police department and the chief of police because the ABC did not have jurisdiction to decide the issue of the constitutional violations directly. Id at 607. The Ninth Circuit emphasized that the ABC's jurisdiction was limited by California law to decide liquor license revocation and did not extend to claims of police misconduct. Id at 608.

The United States, here, argues that Shaw requires that the court alter its previous determination that the decision by the WCAB bars this suit because the WCAB did not have jurisdiction to find that state law was preempted by federal law. The United States points out, and CIGA concedes, that the WCAB did not have jurisdiction to declare a California statute unconstitutional or preempted by federal law. Greener v Workers' Compensation Appeals Board, 6 Cal 4th 1028, 1038 (1993), citing Cal Const, Art III, § 3.5. According to the United States, the WCAB decision cannot bar this action because the WCAB's inability to rule that section 1729 preempted California law means the WCAB's decision lacks preclusive effect under Shaw.

The United States, however, fails to discuss in depth the holding in Shaw that is most analogous to the action at bar. Before Shaw addressed issue preclusion relating to the city, the police department and the chief of police, Shaw found that the plaintiff's claim for an injunction against the director of the ABC reinstating the liquor license was barred by claim preclusion. 788 Fed 2d at 605-06. Claim preclusion barred the claim against the director of the ABC despite the fact that the claim arose under constitutional law and "[t]he ABC's jurisdiction [was] limited to determining whether a liquor license should be revoked or suspended." 788 F2d at 608. Shaw stated: "The California Legislature has set up a detailed and comprehensive scheme for the review of ABC decisions and it is clear that a collateral attack of the type the [plaintiffs] seek to engage in would not be allowed." Id at 606. The court infers in the present context that Shaw teaches that the proper method for reviewing the administrative proceedings and bringing those constitutional challenges was for the United States to appeal the WCAB decision in state court rather than to bring a collateral attack in federal court. To be sure, this raises an interesting dilemma for the United States as removal to federal court of any such state court proceeding may not be possible. See 28 USC § 1445(c).

Here, the WCAB had jurisdiction over the action brought before it by the United States —— a workers' compensation medical lien. See, e g, Hand Rehabilitation Center v Workers' Compensation Appeals Board, 34 Cal App 4th 1204, 1214 (1995). In fact, the WCAB's jurisdiction over such actions is exclusive and reviewable in California appellate courts. Id. Accordingly, despite the fact that the WCAB was unable to reach the federal preemption question posed by the United States, Shaw requires any review of the WCAB decision to proceed through the channels designated by the California legislature —— the California appellate courts.

The United States argues in the alternative that under the Utah Construction requirements, the court should deny preclusive effect to the WCAB decision because the inability of the WCAB to reach the United States' preemption argument denied the United States a "full and fair opportunity to litigate" under Utah Construction. Doc #31 at 13-14.

There is no merit to this argument. As the court's previous order made clear, the United States received a full and fair hearing before the WCAB. Doc #29 at 5-6. The WCAB's inability to reach the preemption issue did not come into play because the WCAB determined that the potentially-preempting federal statute did not apply to CIGA. Doc #11-3, Exh 15 at 42-44. But even if the United States felt that the WCAB's limited jurisdiction affected the outcome of the proceeding, the United States had an opportunity to appeal the decision. Cal Labor Code § 5950. The Ninth Circuit has held that the right to appeal to courts with jurisdiction to declare statutes unenforceable supplies litigants a full and fair hearing even when the agencies first hearing the claims lack that jurisdiction. Dash v Alcoholic Beverage Control Appeals Bd, 683 F2d 1229, 1233-35 (9th Cir 1982).

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Accordingly, the United States' arguments that the WCAB lacked jurisdiction to find that federal law preempts California state law does not reveal a clear error of law in the court's March 20, 2009 order. The United States motion to alter or amend that order is therefore DENIED.

IT IS SO ORDERED.

VAUGHN R WALKER
United States District Chief Judge